



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM CONSALO & SONS FARMS, INC.

Plaintiff

v.

JUNIPER TREE, INC., a/t/a  
BEST PRODUCE, et al

Defendants

Civil No. 07cv6678

### STIPULATION AND ORDER

Plaintiff, William Consalo & Sons Farms, Inc. ("Consalo"), by and through its undersigned attorneys, and Defendants, Juniper Tree, Inc., a/t/a Best Produce, L.L.C., and Young J. Suh, by and through their undersigned attorney, hereby stipulate and agree to settle this matter on the terms set forth below, and the Court hereby approves this Stipulation and enters the Order thereon.

1. Plaintiff, Consalo, is a trust creditor under the trust provisions of the Perishable Agricultural Commodities Act, 7 U.S.C. 499e(c), against defendants, Juniper Tree, Inc., a/t/a Best Produce, L.L.C. and Young J. Suh, on a debt in the amount of \$71,720.18, plus attorney fees of \$2,000.00 and interest at the rate of 5% per annum from the date of this Stipulation and Order.

2. Defendants Juniper Tree, Inc., a/t/a Best Produce and Young J. Suh shall pay to plaintiff Consalo the sum of Seventy-one Thousand Seven Hundred Twenty 18/100 Dollars (\$71,720.18), plus \$2,000.00 in attorney's fees and interest at the rate of 5% per annum from the date of this Stipulation and Order, as follows: \$12,000.00 upon

entry of this Stipulation and Order; and the balance in separate, equal installments of \$5,000.00 every 14 days commencing on August 3, 2007, until the balance is paid in full. All payments shall be made by certified check, cashiers check or money order, payable to William Consalo & Sons Farms, Inc. and delivered to McCarron & Diess, 4900 Massachusetts Avenue, N.W., Suite 310, Washington, D.C. 20016 on or before the date payment is due.

3. To secure the payment of said amount, defendants, Juniper Tree, Inc., a/t/a Best Produce and Young J. Suh have executed a Joint Motion for Entry of Order and Judgment, which will be held in escrow by the attorneys for the Plaintiff unless there is a default. (A copy of the Joint Motion for Entry of Order and Judgment and Proposed Order and Judgment are attached.)

4. If there is a default in the payment of any of the payments referenced in paragraph 2, the aforesaid principal sum above referenced in paragraphs 1 and 2, or any balance that may appear to be unpaid thereon, together with all costs and reasonable attorney's fees to collect the sum due (including those incurred in any proceedings to determine additional costs and fees) (hereafter "the Debt"), shall, at the option of the Plaintiff, thereupon become immediately due and payable, and Plaintiff, upon the filing of an affidavit as to such default by Plaintiff's attorney with the Court with a copy thereof to defendants' counsel, shall be entitled to file the previously executed Joint Motion for Entry of Order and Judgment and obtain a Judgment against defendants, Juniper Tree, Inc., a/t/a Best Produce and Young J. Suh under the trust provisions of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c) for the full amount of the Debt.

5. Nothing herein, including the installment nature of the payments being made hereunder, shall be deemed, interpreted or otherwise construed as an extension of credit by the Plaintiff to Defendants, or as a waiver of the Plaintiff's rights under the statutory trust provision of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §499e(c). Plaintiff's rights under this Stipulation and Order are in addition to its rights under said trust provision.

6. Upon receipt of the full payment, in accordance with the terms set forth herein, Plaintiff shall prepare and file a Stipulation to Dismiss with Prejudice with this Court, and issue a General Release in favor of all Defendants.

7. Plaintiff shall dismiss the complaint against Defendants filed with the United States Department of Agriculture, File PACA E-07-301, upon entry of this Stipulation and Order.

8. The Court shall retain jurisdiction over the parties during the pendency of the application of this Order.

9. This case shall be administratively closed, with the Court retaining complete jurisdiction to reopen this case and enforce the terms of this Order upon application by any of the parties hereto.

Dated this 27th day of July, 2007

IT IS SO STIPULATED.

LAW OFFICES OF BRUCE LEVINSON

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Attorneys for Plaintiff

SO ORDERED this 6<sup>th</sup> day of August, 2007.

  
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U.S. District Court Judge